

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL D. McCROY,

Defendant.

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8:09CR272

**ORDER, FINDINGS AND
RECOMMENDATION**

This matter is before the court on defendant McCroy's "Motion to File Pretrial Motions Out of Time" (#102) and "Motion to Dismiss Indictment Or, in the Alternative, for Election of Remedies" (#103). I find that the motion to file pretrial motions out of time should be denied. I recommend that the motion to dismiss indictment be stricken or denied as untimely filed.

The record shows that, after procuring two extensions of time, McCroy was given until October 5, 2009 to file pretrial motions. McCroy filed a Motion to Suppress (#57) and a Motion to Sever Counts¹ (#59) on October 5. During the suppression hearing on January 21, 2010, McCroy indicated that he would be wanting to file more pretrial motions; however, he was not given permission to do so at that time.

The motion for leave to file pretrial motions out of time was filed four months after the extended pretrial motion deadline expired. The subjects of the proposed motions all involve legal issues or facts which could have been raised on or before the October 5, 2009 deadline. The hearings on the defendant's timely-filed motions have been

¹The Motion to Sever was resolved against the defendant on January 26, 2010 (#99).

concluded. The defendant has not shown any cause, much less good cause, for a four-month extension of the pretrial motion deadline.

The "Motion to Dismiss Indictment Or, in the Alternative, for Election of Remedies" (#103) was filed four months out of time, without permission, and without good cause shown for its untimely filing.

For these reasons,

IT IS ORDERED that defendant McCroy's "Motion to File Pretrial Motions Out of Time" (#102) is denied.

IT IS RECOMMENDED that McCroy's "Motion to Dismiss Indictment Or, in the Alternative, for Election of Remedies" (#103) be stricken or denied as untimely filed.

DATED February 9, 2010.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**